

UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA

JOSEFA S. LOPEZ, JOSE  
TRINIDAD CASAS, MARIA C.  
CASAS, LYNDON B. GRAVES,  
TYRONE EVENSON,  
MICHELLINA EVENSON, BRYAN  
GRAY, HELEN GRAY, PATRICK  
FRANKOSKI, et al.,

Plaintiffs,

vs.

EXECUTIVE TRUSTEE SERVICES,  
LLC.; COUNTRYWIDE HOME  
LOANS, INC.; MERSCORP, INC.,  
MORTGAGE ELECTRONIC  
REGISTRATION SYSTEMS,  
RECONTRUST SAXON  
MORTGAGE SERGVICES, INC.;  
GALE GROUP dba T.D.  
FINANCIAL SERVICES, et al.,

Defendants.

Case No. 3:09-cv-00180-ECR-VPC

ORDER

On July 15, 2011, Plaintiff Bryan Gray filed an ex parte motion (#482) to enforce stipulation and order (#66) not to foreclose. We entered an order (#483) granting the motion. Since the order was entered without the opportunity for Defendants Chevy Chase Bank and T.D. Service Company to respond, the order provided that it was entered subject to the right of Chevy Chase Bank and T.D. Service Company to file a motion for reconsideration within 21 days.

1 Our order was entered for the purposes of maintaining the status quo until  
2 the said Defendants could be heard.

3 Capital One, N.A., successor by merger to Chevy Chase, now moves  
4 (#484) for reconsideration of our order (#483). Defendant T.D. Service  
5 Company has joined (#486) in the motion.

6 The stipulation and Order (#66) provided that Chevy Chase Bank and its  
7 agents including trustee T.D. Service Company would not initiate or advance any  
8 foreclosure sale on the Gray property pending resolution of those claims asserted  
9 by Plaintiff Gray that could affect Chevy Chase Bank's right to foreclose on the  
10 Gray property.

11 On July 15, 2009, the Court entered its order (#235) granting Chevy Chase  
12 Bank's motion (#133) to dismiss the First Amended Complaint as to Defendant  
13 Chevy Chase Bank on the grounds that Plaintiffs failed to effectuate service in  
14 accordance with the Federal Rules of Civil Procedure (Fed.R.Civ.P.). As of July  
15 15, 2009, Chevy Chase Bank was no longer a party to this action.

16 Thus, the claims asserted by Plaintiff Gray against Chevy Chase Bank that  
17 could affect the Bank's rights to foreclose were resolved. Chevy Chase Bank  
18 was dismissed from the action and was no longer a party to the action. The  
19 stipulation and order (#66) were no longer in force and by their own terms had  
20 been terminated.

21 Defendant Chevy Chase Bank was not required to meet the requirements  
22 of Fed.R.Civ.P. 59(e) or 60(b)(1) in making its motion for reconsideration. The  
23 motion was properly made pursuant to the court order (#483) which provided that  
24 the order was subject to the right of Defendants Chevy Chase Bank and T.D.  
25 Service Company to file a motion for reconsideration within 21 days. The  
26 motions (#484) and (#486) were made in accordance with our specific order  
27 (#483) which provided for the filing of the motion for reconsideration.

28 Defendant T.D. Service Company joined (#486) in the Defendant Capital

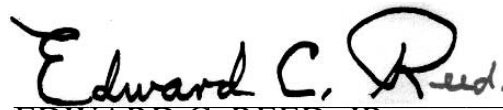
1 One, N.A., motion for reconsideration (#484). T. D. Service Company did not,  
2 however, join in and was not a party to the stipulation (#66) between Plaintiffs  
3 and Chevy Chase Bank, F.S.B., regarding Gray's property. However, the  
4 stipulation (#66) provides that it is made on behalf of "Chevy Chase, its . . .  
5 agents, including trustee T.D. Service Company . . . ." Thus, in entering into the  
6 stipulation, Chevy Chase bank intended to bind Trustee T.D. Service Company  
7 as its agent to the requirements of the stipulation (#66).

8 T.D. Service Company was subject to release from the stipulation on the  
9 same basis as Chevy Chase Bank, i.e., resolution of those claims asserted by  
10 Plaintiffs that could affect Chevy Chase Bank's right to foreclose on the Gray  
11 property. As recited above, there has been such resolution because Chevy Chase  
12 Bank has been dismissed from the action. The stipulation by its own terms is no  
13 longer in effect as to either Chevy Chase Bank or T.D. Service Company.

14 The ongoing MDL proceedings involving MERS do not affect the  
15 outcome. The stipulation has terminated by its own force. The MDL  
16 proceedings are not affected by it.

17 IT IS ORDERED that the Motion for Reconsideration (#484) filed by  
18 Capital One, N.A., successor by merger to Chevy Chase Bank, joined in by T.D.  
19 Service Company (#486), is **GRANTED**. The stipulation (#66) between  
20 Plaintiff Bryan Gray and Chevy Chase Bank regarding the Gray property and the  
21 Order (#66) are **vacated**, and shall be of no further force or effect. To the extent  
22 Capital One, N.A., was bound by or liable under the stipulation and order (#66),  
23 it is released from liability.

24  
25 DATED this 31<sup>st</sup> day of October 2011.

26  
27   
28 EDWARD C. REED, JR.  
United States District Judge